

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES H. FISHER,

Plaintiff,

No. CIV S 05-0540 MCE EFB P

vs.

N. DIZON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a prisoner without counsel seeking relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On February 2, 2007, defendants filed a motion for summary judgment. *See* Fed. R. Civ. P. 56. On May 1, 2007, the court directed plaintiff to file an opposition within 30 days. Plaintiff has not filed an opposition or a statement of no opposition.

In cases in which one party is incarcerated and proceeding without counsel, motions ordinarily are submitted on the record without oral argument. Local Rule 78-230(m). “Opposition, if any, to the granting of the motion shall be served and filed with the Clerk by the responding party not more than eighteen (18) days, plus three (3) days for mailing or electronic service, after the date of service of the motion.” *Id.* A responding party’s failure “to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion and may result in the imposition of sanctions.” *Id.* Furthermore, a

1 party's failure to comply with any order or with the Local Rules "may be grounds for imposition  
2 of any and all sanctions authorized by statute or Rule or within the inherent power of the Court."  
3 Local Rule 11-110. The court may recommend that an action be dismissed with or without  
4 prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v. Bonzelet*,  
5 963 F.2d 1258, 1252 (9th Cir. 1992) (district court did not abuse discretion in dismissing *pro se*  
6 plaintiff's complaint for failing to obey an order to re-file an amended complaint to comply with  
7 Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)  
8 (dismissal for *pro se* plaintiff's failure to comply with local rule regarding notice of change of  
9 address affirmed);

10 On August 5, 2007, the court advised plaintiff of the requirements for filing an opposition  
11 to a summary judgment motion, that failure to oppose such a motion may be deemed a waiver of  
12 opposition to the motion and that failure to comply with the Local Rules may result in a  
13 recommendation of dismissal. Also on August 5, 2007, the Clerk of the Court served on plaintiff  
14 a copy of the Local Rules of this Court. The court finds that plaintiff has been advised of how to  
15 proceed at the summary judgment stage of these proceedings and has been warned that failure to  
16 comply with a court order is grounds for dismissal. The court further finds that plaintiff has  
17 disobeyed an order to respond to defendants' motion for summary judgment.

18 Accordingly, it is RECOMMENDED that this action be dismissed. Fed. R. Civ. P. 41(b).

19 These findings and recommendations are submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after  
21 being served with these findings and recommendations, any party may file written objections  
22 with the court and serve a copy on all parties. Such a document should be captioned "Objections  
23 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the

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1 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158  
2 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: September 21, 2007.

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6 EDMUND F. BRENNAN  
7 UNITED STATES MAGISTRATE JUDGE  
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